

**EXHIBIT N**  
**TO PLAINTIFFS' MOTION FOR**  
**PARTIAL SUMMARY JUDGMENT**

00001

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3 -----X

4 DEBORAH BOLLINGER and BRYAN :

5 BUBNICK, individually and on behalf:

6 of all others similarly :

7 situated, :

8 Plaintiffs, :

9 v. : Case No.:

10 RESIDENTIAL CAPITAL, LLC and : C10-1123 (RSM)

11 ALLY FINANCIAL, INC., :

12 Defendants. :

13 -----X

14

15 30(b)(6) Deposition of RESIDENTIAL CAPITAL, LLC

16 by and through its corporate designee

17 ANNE JANICZEK, ESQUIRE

18 Fort Washington, Pennsylvania

19 Thursday, November 10, 2011

20 8:43 a.m.

21

22 Job No.: 22-207403

23 Pages 1 - 121

24 Reported by: Darlene S. Traficante, RPR, CSR, CMRS

25

00028

1 very few employees of that entity?

2 Q Okay.

3 And what is their purpose for the business?

4 A That would be a better question for someone  
5 in the legal staff as far as why they have the holding  
6 company structure.

7 Q Okay.

8 So you don't know what they do?

9 A I know it's a holding company, and I know  
10 there is lots of great legal reasons why the holding  
11 company structure is in place.

12 Q Right.

13 Okay. The one below that, GMACM Mortgage,  
14 LLC, where are they headquartered?

15 A They are headquartered in Delaware. That's  
16 the registered location for GMAC Mortgage, LLC.  
17 Principal place of doing business though is here in  
18 Fort Washington.

19 Q And what's -- do they provide any products  
20 or services?

21 A Yes.

22 Q And what is that?

23 A That's the mortgage lending unit in which  
24 they provide mortgages for consumers, mortgages for  
25 correspondent and wholesale lenders and servicing.



00056

1 Q I got you.

2 A -- functions, and then you have your

3 operational function. Right? But under business

4 lending.

5 Q Okay.

6 So under business lending we have

7 origination functions and then operational functions?

8 A Correct.

9 Q And which -- who is in the origination

10 function?

11 A So you have sales agents that are, again, we

12 call them sales directors and account executives that

13 work with various wholesale and correspondent clients

14 to try to, you know, get business from them and manage

15 those relationships.

16 Q Okay.

17 And then the operational people are who?

18 A The client relations managers, the

19 underwriters, the individuals we just talked about.

20 Q Okay.

21 And when you're using the term, the term

22 "operational", what do you mean by that?

23 A The ones that are reviewing the loan files,

24 making sure that they are properly packaged,

25 processed, closed, meeting our underwriting standards.

00057

1 What I would consider more of the back office function  
2 as opposed to the front office function of sales. Out  
3 in the field garnering the business. These  
4 individuals are the ones that are, once the business  
5 is garnered, are making sure it's got proper  
6 documentation, it's meeting investor regulations and  
7 requirements and standards. Those sorts of things.

8 Q Okay.

9 And it's certainly related to that sales  
10 function, though, right?

11 A It's connected to the sales function.

12 Q Okay.

13 So when -- I think my chart confusion was I  
14 had business lending unit and a separate one for  
15 correspondent and wholesale lending. And that's all  
16 the same.

17 A It's all the same.

18 Q So it's called the business lending unit and  
19 within it are correspondent lending, wholesale lending  
20 and community finance?

21 A Correct.

22 Q Okay.

23 And all of the underwriters are in the  
24 business lending unit?

25 A That is correct.

00065

1 Mortgage.

2 Q Okay.

3 And how about, is there a quality control  
4 function that goes on within GMAC Mortgage, LLC?

5 A Well, there is various forms of quality  
6 control. So --

7 Q Is there a business unit or a team that's in  
8 charge of that?

9 A There is an audit team. There is a  
10 compliance team.

11 Q Okay.

12 And where do they -- in what unit do they  
13 fit under?

14 A So audit reports up through audit. I mean,  
15 that's just what they're called.

16 Q Okay.

17 A Compliance reports up through compliance.

18 Q Who is in charge of audit?

19 A Ultimately for Ally it's Dan Soto. For GMAC  
20 Mortgage it's Steve Fahs.

21 Q How do you spell Steve's last name?

22 A F-A-H-S.

23 Q And as far as audit, the audit function goes

24 that Steve Fahs is in charge of, can you give me an

25 overview of what that is?



00066

1 A So they will do testing of various policies  
2 and procedures in the various business units, make  
3 sure they're being followed, complied with. And  
4 they'll do just that, an audit of it. And they'll  
5 come back with certain findings as to whether or not  
6 they have any, you know, if there is a satisfy, meets  
7 standards rating given, for example, or not.

8 Q And how about compliance, who is in charge  
9 of compliance?

10 A For mortgage it's Sonja Macumber.

11 Q And what's her job title?

12 A Her job title is director of compliance.

13 Q Okay.

14 It's got to be something like that.

15 And, generally, what's the function of  
16 compliance with respect to mortgage?

17 A So they'll look at -- they work, close  
18 interface with legal on different laws, regulations  
19 that are coming out. And making sure that the various  
20 business unit is aware of them.

21 Again, using an example of RESPA, because  
22 that's a big one, if there is any changes to RESPA  
23 they're going to make sure that the various business  
24 units, the origination channels for that applies, that  
25 they're aware of the changes, that the changes are

00067

1 being implemented. They're going to test as well to  
2 make sure that we are complying with all of the  
3 changes that were implemented.

4 Q Okay.

5 And that leads me to another thing. You  
6 said channel. And I've seen that in some of the  
7 company's documents. How do you use that term within  
8 the company?

9 A Usually it's referred to with the  
10 origination channels. It's usually referred -- it's  
11 not different than unit. It's the same thing.

12 Q That's what I thought.

13 A It's just an interchangeable, a wholesale  
14 channel.

15 Q Got it. Thanks.

16 All right.

17 I want to talk about -- I understand that  
18 you're designated just to talk about the  
19 classification decision of underwriters from 2006 to  
20 2008; is that right?

21 A Correct.

22 Q Okay.

23 And when was the first decision made to  
24 classify the underwriters as exempt?

25 MR. GOLDER: Objection.



00068

1 THE WITNESS: They are always classified as  
2 exempt.

3 BY MR. SCHUG:

4 Q Okay.

5 So from the time the company started --

6 A I'm talking about '06 to '08. So during  
7 that time period they were always classified as  
8 exempt.

9 Q Okay.

10 And what steps did the company take within  
11 that time period to ensure that they were properly  
12 classified?

13 A We utilized, as employment law counsel which  
14 was my role at the time, we did a review of their job  
15 functions, job responsibilities. Engaged outside  
16 counsel to do an audit to ensure that our  
17 determination of exempt classification was proper.

18 Q Okay.

19 Let's talk first about anything that you did  
20 without the assistance of outside counsel. Was there  
21 an exemption analysis done without the assistance of  
22 counsel?

23 A There was not an exemption analysis done  
24 without outside counsel at that time.

25 Q And is the analysis that was done with

00071

1 BY MR. SCHUG:

2 Q And I want to be more precise than that so

3 I'm glad you're clarifying that for me.

4 Outside of the Morgan Lewis analysis,

5 between 2006 and 2008 did anyone within the company

6 specifically look at specific legal authorities and

7 rely on those authorities, or DOL opinion letters, or

8 anything, to confirm the decision that the

9 underwriters should be exempt?

10 A Certainly I looked at the 2006 DOL opinion

11 letter, and subsequent case law. But I would say it

12 was all in conjunction with, conversations with,

13 dialogue with outside counsel who was all along the

14 way advising us on FLSA types of issues.

15 Q Okay.

16 And when the ultimate exemption decision was

17 made, who was it made by?

18 MR. GOLDER: Objection.

19 THE WITNESS: When the ultimate exemption

20 decision was made it would have been in consultation

21 with legal, myself, Mike Kaplan, the business, and

22 individuals from the compensation team who were all

23 involved in that analysis.

24 BY MR. SCHUG:

25 Q Okay.

00077

1 I understand?

2 A Yes.

3 Q And Mr. Eagles is not?

4 A I don't know.

5 Q Do you know where Mr. Eagles works  
6 currently?

7 A I don't.

8 Q Okay.

9 As far as the decision to engage the Morgan  
10 Lewis firm to do an audit of the underwriter job, was  
11 there a specific reason why they were engaged?

12 A When you say "specific reason", I'm not sure  
13 I understand.

14 Q Sure.

15 Was there a -- well, I'll ask it this way.

16 Why was the decision made to employ the  
17 Morgan Lewis firm to review the underwriter exemption  
18 classification?

19 A Morgan Lewis had been sort of the  
20 longstanding advisor of GMAC Mortgage on employment  
21 law matters. And so they were somebody that we had  
22 worked with, had confidence in. And we, therefore,  
23 engaged them for the audit.

24 Q And when did that audit first begin?

25 A I don't remember exactly when the audit



00078

1 first began. It would have been some time in '06, I

2 don't remember the month.

3 Q And just sticking with the audit, tell me

4 about the process that went on when Morgan Lewis was

5 performing their audit?

6 A So we talked to them about the general

7 nature of what we wanted them to look at, to ensure

8 that the classification of exempt was proper. They

9 looked at -- we provided them with job descriptions.

10 They spoke with management and underwriters

11 within the underwriting unit as far as their, the

12 applicable job duties and responsibilities. They

13 looked at underlying FLSA regulations. They looked at

14 DOL opinion letters. They looked at case law.

15 Applied all of those together to come back

16 with their recommendation that the exempt

17 classification was proper.

18 Q And how long did that process take?

19 A I don't remember specifically, but it was,

20 you know, certainly several weeks if not a couple of

21 months.

22 Q How many underwriters did the Morgan Lewis

23 firm talk to?

24 A I don't recall specifically how many they

25 talked to. But I want to say a few. I don't remember

00086

1 review, felt very confident that they were

2 appropriately classified.

3 Q Did the company do any research or did

4 Morgan Lewis do any research in to how other companies

5 in the industry were classifying underwriters at that

6 time?

7 A I don't recall if they did research in to

8 that. I don't recall one way or the other on that.

9 Q To your knowledge was that ever done between

10 2006 and 2008?

11 A I really don't recall. I don't know.

12 (ALLY 30(B)(6) Deposition Exhibit 12 was

13 marked for identification and attached to the

14 transcript.)

15 MR. GOLDER: What are we up to?

16 THE COURT REPORTER: 12.

17 BY MR. SCHUG:

18 Q All right.

19 I'm showing you what has been marked as

20 Exhibit Number 12. This is, I understand --

21 MR. GOLDER: Before you ask questions, maybe

22 let the witness review the document.

23 MR. SCHUG: Sure.

24 Take a look at it.

25 THE WITNESS: Okay.

00087

1 BY MR. SCHUG:

2 Q Now, my understanding is that even though  
3 this is marked as a draft this is, in fact, the final  
4 opinion letter that was given to you by the Morgan  
5 Lewis law firm; is that right?

6 A That's correct.

7 Q And this is the one that you relied on in  
8 making your exemption determination?

9 A That's correct.

10 Q Okay.

11 Now, as you and I discussed, it says in the  
12 first paragraph here that the Underwriter I and II  
13 positions in the retail organization were addressed in  
14 this letter. Do you see that?

15 A Yes.

16 Q Now, you used this letter to, and this  
17 analysis by Morgan Lewis to make the exemption  
18 determination for all of the underwriters in the  
19 company; is that right?

20 A That's correct.

21 Q Was there -- were there any differences  
22 within the job duties of the underwriters that made  
23 you uncomfortable applying this exemption  
24 determination to any certain group of underwriters?

25 A No.



00088

1 Q And did you personally review this in detail  
2 when you received it?

3 A Yes.

4 Q And did you agree with the research and  
5 analysis that the Morgan Lewis law firm had done  
6 that's contained in this?

7 A Yes.

8 Q Okay.

9 Is there anything specifically as far as the  
10 legal research and the law, is there anything that you  
11 disagreed with?

12 A No. To the best of my recollection at that  
13 time there was nothing I disagreed with.

14 Q Okay.

15 And as you sit here today is there anything  
16 you can disagree with?

17 A There is nothing that I disagree with.

18 Q Okay.

19 And I want to talk also a little bit about  
20 the factual analysis that was done by the Morgan Lewis  
21 law firm. And that's contained in this letter.

22 When you read this was -- did you go through  
23 it factually and verify it with anyone, that their  
24 conclusions on the facts were correct?

25 A Yes. We discussed with the business leaders

00090

1 2006 to 2008?

2 A Well, you know, again, there was  
3 conversations like we've talked about with counsel,  
4 you know, which included all the underlying facts and  
5 law and regulations and items that they reviewed.  
6 Which included the Department of Labor '06 opinion  
7 letter that we talked about.

8 So that was included in our overall  
9 discussions and analysis with counsel.

10 Q And when you received this opinion letter  
11 from the Morgan Lewis law firm, did the company do any  
12 separate analysis of those legal authorities on its  
13 own to determine whether they thought that those  
14 authorities supported the exemption decision?

15 MR. GOLDER: Objection.

16 THE WITNESS: We had hired Morgan Lewis to  
17 do that. That's why we engaged the firm, to do that  
18 analysis of the underlying regulations, case law,  
19 opinion letters. And that was what they were engaged  
20 and hired to do, and that's what they did.

21 BY MR. SCHUG:

22 Q So the answer is, no, nobody from the  
23 company did any independent analysis or research?

24 MR. GOLDER: Objection.

25 THE WITNESS: That's what we hired Morgan

00091

1 Lewis to do. So, no, we did not do an independent  
2 analysis other than what you and I discussed before as  
3 far as our own reading which was in conjunction with  
4 the Morgan Lewis analysis.

5 BY MR. SCHUG:

6 Q Okay.

7 Well, I want to talk to you specifically  
8 about some of the authorities that Ally is relying on  
9 in this case to support, you know, their decision to  
10 classify underwriters. And since it sounds like you  
11 were looking at them at the time.

12 (ALLY 30(B)(6) Deposition Exhibit 13 was  
13 marked for identification and attached to the  
14 transcript.)

15 BY MR. SCHUG:

16 Q I'm showing you what has been marked as  
17 Exhibit 13. Do you recognize this?

18 MR. GOLDER: Let her read the document  
19 first.

20 THE WITNESS: Yeah, it would be part of the  
21 FLSA regulations.

22 BY MR. SCHUG:

23 Q And did you look at this -- this is  
24 regulation 29 C.F.R. 541.200, and it's the general  
25 rule for administrative employees.



00093

1 determination.

2 BY MR. SCHUG:

3 Q And you're familiar with this regulation

4 though; is that correct?

5 A I am familiar with the regulation.

6 Q And this regulation is just the general FLSA

7 rule for the administrative exemption; is that right?

8 A Correct.

9 Q And this rule doesn't specifically address

10 how underwriters specifically should be classified; is

11 that right?

12 MR. GOLDER: Objection.

13 THE WITNESS: I don't believe it

14 specifically addresses how underwriters should be

15 classified.

16 BY MR. SCHUG:

17 Q Okay. You can put that one aside.

18 (ALLY 30(B)(6) Deposition Exhibit 14 was

19 marked for identification and attached to the

20 transcript.)

21 BY MR. SCHUG:

22 Q Now I'm showing you what's been marked as

23 Exhibit 14. Take a minute and look at it.

24 MR. GOLDER: Take your time.

25